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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1882.

No. 1454.

FRANCIS B. FLEITAS, APPELLANT,

vs.

GILBERT M. RICHARDSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED DECEMBER 18, 1882.

Denied

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a *Transcript of Appeal, Returnable to the Supreme Court of the United States at the City of Washington, D. C., on the Second Monday of October, A. D.* 1888.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

T. J. Semmes, W. F. & D. C. Mellen, for complainant, appellee; J. R. Beckwith, for defendant, appellant.

1 *Bill of Complaint. Filed June* 29, 1888.

UNITED STATES OF AMERICA:

United States Circuit Court, Eastern District of Louisiana.

GILBERT M. RICHARDSON
vs.
FRANCIS B. FLEITAS. } No. 11722, Equity Docket.

To the honorable the judges of the circuit court of the United States, fifth judicial circuit, eastern district of Louisiana:

Your orator, Gilbert M. Richardson, who is a citizen of the State of New York, residing in the city of New York, in said State of New York, unto your honors respectfully shows—

That Francis B. Fleitas, who is a citizen of the State of Louisiana, residing in the parish of St. Bernard and within the jurisdiction of this court, on the 28th day of January, 1884, being then indebted to your orator in the sum of sixty-three thousand dollars for money lent, executed and delivered to your orator his five promissory notes of that date, to the order of your orator, and payable at the Louisiana National Bank of New Orleans, La., with interest from maturity at the rate of eight per cent. per annum, each for the sum of
2 twelve thousand six hundred ($12,600) dollars, to mature January first (fixed), 1885, 1886, 1887, 1888, and 1889, respectively, and having attached one, two, three, four, and five interest coupons, respectively.

That to secure the full and punctual payment of all said notes and coupons the said Francis B. Fleitas, by authentic act of mortgage, passed before Benjamin Ory, a notary public in and for the parish of Orleans, on the said 28th day of January, 1884, did specially mortgage and hypothecate in favor of your orator and his assigns and in favor of all subsequent holders of said promissory notes the following-described property, including the buildings, fixtures, and all improvements and appurtenances situated thereon, to wit:

First. A certain tract of land or plantation, known as the "Myrtle

Grove," situated in the parish of St. Bernard, in the State of Louisiana, on the left bank of the River Mississippi, at about two and one-half leagues below the city of New Orleans, measuring about twenty arpents, more or less, front on said river, but on a line measuring, at right angles from the intersection of the levee with the lower side, *measuring* nineteen arpents and twelve toises in width, and having on the lower side linei which separates it from the lands of Ducros, a depth of two hundred and thirty-one and one-half arpents, and on the upper side line, which separates it from the property of Gabriel Villeré, a depth of one hundred and ninety-seven and one-third arpents, both side lines diverging four degrees fifty-four minutes and thirty seconds and running to the property of
3 Antoine Michand, which bounds said plantation in the rear, being the property which said F. B. Pleitas acquired from L. E. Lemarie by act passed January 7th, 1882, recorded in book No. 15, fol. 121–123, of the records of conveyances of St. Bernard parish, La.

Second. A sugar plantation situated in St. Bernard parish, at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Messrs. Erreville F. Villeré and Denis Villeré and on the lower line by the plantation of A. W. Walker, being the property which the said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated April 28th, 1877, and registered in Book of Conveyances No. 13, p. 194, of the recorder of St. Bernard parish, La., and known as the "Corinne" plantation, and also all the engines, boilers, kettles, and other machinery, and all other property of whatsoever name or description immovable by destination then on or that might be thereafter placed on or attached to said plantations or either of them.

That in and by said act of mortgage said Fleitas bound himself to pay and reimburse unto your orator and holders of said notes all such attorneys' fees, all costs, charges, and expenses as your orator might incur or pay in the event of non-payment of said promissory notes at maturity or of any legal proceedings being instituted at any time for the protection or preservation of the rights of the mortgagee or any future holder of said notes, said attorneys' fees to be fixed at five per cent. on the amount
4 in suit and unpaid; and said Fleitas also in and by said act of mortgage further bound himself and his heirs not to alienate, deteriorate, or encumber said mortgaged property to the prejudice of said mortgage act.

That said F. B. Fleitas in and by said act of mortgage declared and acknowledged his indebtedness to your orator as evidenced by said notes and coupons and consented and stipulated that in the event the debts or any portion thereof secured or intended to be secured by said act of mortgage should not be punctually paid when due it should be lawful for and he thereby authorized your orator or any subsequent holder of said notes to cause said mortgaged property to be seized and sold under executory process, without ap-

praisement, to the highest bidder for cash, and expressly confessing judgment in favor of your orator and all holders of said notes for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

That said five promissory notes hereinbefore described and all the interest coupons thereto attached were by said notary duly and legally paraphed "*Ne varietur*" to identify them with said act of mortgage, and were then with said act of mortgage delivered to your orator as aforesaid, represented in said act by his agent and attorney, Wm. F. Mellen, who received said notes and accepted said mortgage for your orator.

That said act of mortgage was filed for record in the mortgage office of said Bernard parish January 29th, 1884, and duly
5 recorded in Mortgage Book No. 12, pp. 80–87, of the mortgage records of said parish.

All of which will appear by reference to a certified copy of the said original act of mortgage, hereto annexed, marked Exhibit "A," and made a part hereof, and to the two of said promissory notes maturing, according to their tenor, January 1st (fixed), 1888, and January 1st (fixed), 1887, respectively, and the coupons annexed thereto, viz., three each for $1,008.00—two maturing January 1st, 1888, and one January 1st, 1889—which two notes and coupons are still held and owned by your orator and hereto annexed as Exhibits B, C, D, E, and F, and made part hereof.

That all the other of said notes and coupons have been paid and satisfied and cancelled.

That said Shattuck & Hoffman, a commercial firm named in said act of mortgage, have no interest in said notes, and your orator is informed and believes that they have no interest in said act of mortgage. Your orator has given them notice of this proceeding.

Your orator avers that under said notes and mortgage there is now past due and owing to your orator by said F. B. Fleitas the sum of twenty-five thousand two hundred dollars ($25,200), as evidenced by the two said unpaid principal notes, with interest at eight per cent. per annum thereon from January 1st, 1888, and the sum of two thousand sixteen dollars ($2,016), as evidenced by the two coupons which fell due January 1st, 1888, with interest thereon at five per cent. per annum from January 1st, 1888.

6 That amicable demand for the payment thereof has been made and refused.

The premises considered, your orator prays that said mortgage may be rendered executory; that a writ of seizure and sale may issue according to law; that, after all legal delays, said mortgaged property may be seized and sold to satisfy the amount of plaintiff's demand as herein set forth, to wit, twenty-seven thousand two hundred and sixteen dollars, with interest on twenty-five thousand and two hundred dollars thereof, at eight per cent. per annum, from January 1st, 1888, and on two thousand and sixteen dollars thereof, at five per cent., from January 1st, 1888, and five per cent. attorneys' fees on said

amount so in suit, and all costs; that said sale may be for cash, without appraisement.

He prays for all general relief in the premises. And as, &c.

(Signed) WM. F. & D. C. MELLEN &
THOS. J. SEMMES,
Sol'rs for Complainant.

STATE OF LOUISIANA, *Parish of Orleans:*

Before me, the undersigned authority, personally came and appeared William F. Mellen, who, being sworn, says that he is the attorney of the complainant in the foregoing bill; that said complainant, Gilbert M. Richardson, is absent from this city and State,
7 and that all the allegations of the foregoing bill are true in substance and in fact, to the best of his knowledge and belief.

(Signed) W. F. MELLEN.

Sworn to and subscribed before me this 28th day of June, 1888.

[SEAL.] (Signed) BENJAMIN ORY,
Not. Pub.

Notice of the foregoing bill and the allegations thereof acknowledged and accepted.

(Signed) SHATTUCK & HOFFMAN,
P'r JOHN G. ROWLANDS.

Order.

Let a writ of seizure and sale issue herein as prayed for and according to law to satisfy complainant's demands as set forth in foregoing bill and petition. Let the marshal seize and take into his possession according to law the property described in the foregoing petition, and then let the sale of this property be stayed till the further orders of this court.

New Orleans, June 29th, 1888.

(Signed) EDWARD C. BILLINGS, *Judge.*

Entered and filed June 29, '88.

8 *Mortgage Marked Exhibit A. Filed June 29th,* 1888.

STATE OF LOUISIANA, *Parish of Orleans:*

Mortgage.

DECEMBER, 1882.

Be it known that on this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and eighty-four, before me, Benjamin Ory, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Francis Barthelemy Fleitas, of Saint Bernard parish, Louisiana, who, in the presence of me, said notary

and the subscribing witnesses hereinafter named, declared that he is justly indebted unto Gilbert M. Richardson, of the city of New York, in the sum of sixty-three thousand (63,000) dollars, for money lent, as evidenced by the five promissory notes of said Francis Barthelemy Fleitas, of even date herewith, to the order of Gilbert M. Richardson, and payable at the Louisiana National Bank of New Orleans, Louisiana, with interest from maturity at the rate of eight per cent. per annum, as follows: Five principal notes, each of the sum of twelve thousand six hundred dollars ($12,600), due January first (fixed), A. D. 1885, 1886, 1887, 1888, and 1889, and having attached, respectively, one, two, three, four, and five interest coupons, which said notes, after having been paraphed by me, the said notary, to identify them herewith, have been delivered to the said
9 Gilbert M. Richardson, herein represented by William F. Mellen, of the parish of Orleans, State of Louisiana, who hereby acknowledges the receipt thereof.

And that whereas the said appearer has obligated and does by these presents, in consideration of the mutual covenants, agreements, and benefits provided and contained in certain articles of agreement executed the 28th day of January, A. D. 1884, by and between said appearer and Messrs. Shattuck & Hoffman, cotton factors and commission merchants, of New Orleans, La., a commercial firm composed of Albert R. Shattuck and Frank B. Hoffman, and to which agreement reference is now particularly made, obligate himself, the said appearer, and his heirs, executors, administrators, and assigns, to gather and put in condition to ship to market as rapidly as possible the crop of sugar and molasses that said appearer or his heirs, executors, administrators, and assigns may raise upon or control from the property hereinafter described during the years 1884, 1885, 1886, 1887, and 1888, and during any following year or years, so long as any portion of the debt secured or intended to be secured by this act shall remain unpaid, and to ship said sugar and molasses from time to time, as the same may be ready for market, to said Shattuck & Hoffman, in New Orleans, to be by them sold on arrival, at their option; and that whereas under said articles of agreement said appearer expects to and may become indebted to said Shattuck & Hoffman during said year or years, on open account or otherwise, or for money paid out and advanced to and for said appearer in and about the making, handling, and con-
10 veyance, carriage, storage, insurance, and sales of said crops of sugar and molasses or otherwise, but which indebtedness to said Shattuck & Hoffman shall in no event exceed in the aggregate an amount equal to the said indebtedness to said Gilbert M. Richardson:

And that whereas it is understood and agreed that said appearer will promptly pay all taxes, assessments, and charges that are or would be a lien upon said property, as the same may be due and payable, and will keep the buildings and machinery situated thereon insured, for the full term of this mortgage, in some responsible company or companies satisfactory to the mortgagees herein in the sum of twenty-five thousand dollars, and will assign and deliver said

policies of insurance to said Shattuck & Hoffman for the use and benefit of all and any persons interested in the debts secured herein; and that if said appearer shall fail to pay any of the taxes, assessments, or other legal charges upon said property when they become due, or shall permit the same to be sold therefor or forfeited for want of bidders, or shall fail to obtain or keep alive said insurance, then said Gilbert M. Richardson and said Shattuck & Hoffman or either of them, or any of their successors or assigns, or any person or persons interested in any of the debts hereby secured shall be entitled to pay the same; but this clause shall not be construed as obligatory on the holder or holders of said promissory notes or said Shattuck & Hoffman or other parties in interest, or as rendering them or any of them liable for any loss, damage, or injury which may result from the non-insurance of said building, and in case of
11 sale for taxes to redeem said property; and that all moneys so paid and all expenses incurred therein and thereby and all payments made at the option of said Gilbert M. Richardson or by said Shattuck & Hoffman or by any person interested as aforesaid for premiums of insurance, as hereinbefore provided, and all sums now due or to become due to said Shattuck & Hoffman, as hereinbefore set forth, shall be a part of the principal debts secured by this instrument and be subject to the same rate and conditions as to interest; but the premiums of insurance and all amounts for taxes and other legal charges upon said property that may be paid by the mortgagees herein named or any of them or any person in interest shall not in any one year exceed in the aggregate two thousand dollars:

Now, in order to secure the full and punctual payment of the said promissory note and such indebtedness as under the provisions hereof may accrue to Shattuck & Hoffman or any person in interest, in capital and interest, at maturity, and attorneys' fees, costs, charges, and expenses, as hereinafter provided, the said appearer moreover declared that he does by these presents specially mortgage and hypothecate in favor of the said Gilbert M. Richardson and his assigns, and in favor of said Shattuck & Hoffman and their assigns, and of any and all such person or persons as may hereafter be the holder or holders of the said promissory notes, all and singular the following-described property, including the buildings, fixtures, and all improvements and appurtenances situated thereon, to wit: First, a certain tract
12 of land or plantation known as the "Myrtle Grove," situated in the parish of St. Bernard, in State of Louisiana, on the left bank of the River Mississippi, at about two and one-half leagues below the city of New Orleans, measuring about twenty arpents, more or less, front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side measuring nineteen arpents and twelve toises in width, and having on the lower side line, which separates it from the lands of Ducros, a depth of two hundred and thirty-one and one-half arpents, and on the upper side line, which separates it from the property of Gabriel Villeré, a depth of one hundred and ninety-seven and one-third

arpents, both side lines diverging four degrees fifty-four minutes and thirty seconds, and running to the line of the property of Antoine Michand, which bounds said plantation in the rear, being the property which said F. B. Fleitas acquired from L. E. Lemarié by act passed Jan'y 7th, '82, recorded in Book No. 15, fo. 121, 122, and 123, of the records of conveyances of St. Bernard parish, La. Second, a sugar plantation, situated in St. Bernard parish at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Mess. Ereville G. Villeré and Denis Villeré and on the lower line by the plantation of A. W. Walker, being the property which the said F. B. Fleitas, acquired from Mrs. B. Fleitas by act of sale dated Ap'l 28th, 1877, and registered in Book of Conveyances No. 13, p. 194, of the records of St. Bernard parish, La., and known as the "Corinne" plantation;

13 and also all the engines, boilers, kettles, and other machinery, and all other property of whatsoever name or description, immovable by destination, now on or that may be hereafter placed on or attached to said plantations or either of them—

The said appearer hereby binding himself and his heirs not to alienate, deteriorate, or encumber the same to the prejudice of this mortgage.

And the said appearer further declared and covenanted with the said mortgagees and each and every one of them that he has good right and lawful authority to sell, alien, convey, and mortgage the property before described; that it is free and clear from all incumbrances; that he has an indefeasible title to the same in fee simple, which he will warrant and defend.

And the said appearer further declared that he does by these presents consent, agree, and stipulate that in the event that the debts or any portion thereof secured or intended to be secured by this act are not punctually paid when due, or on his failure to keep any of the agreements or covenants contained in this act, it shall be lawful for and he hereby authorizes the said mortgagees or either and every one of them, or any other holder or holders of said notes, or any assigns of said Shattuck & Hoffman, of said indebtedness to them, to cause all and singular the property hereinbefore described and herein mortgaged to be seized and sold under executory process, without appraisement, to the highest bidder for cash, hereby confessing judgment in favor of said mortgagees and of such per-

14 sons or persons as may be the holder or holders of said promissory notes, and all assigns of said Shattuck & Hoffman, for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

And the said appearer further declared that he does by these presents obligate himself and his heirs to pay and reimburse unto said mortgagees or any such person or persons as may be the holder or holders of said promissory notes all such attorneys' fees, together with all such costs, charges, and expenses as said mortgagees or any such holder or holders shall or may incur or pay in the event of the

non-payment of said promissory notes at maturity or of any legal proceedings being instituted at any time for the protection or preservation of the rights of the said mortgagees or of any future holder of said notes or of any part of said indebtedness to Shattuck & Hoffman; said attorneys' fees, however, to be fixed at 5 per cent. on the amount so in suit and unpaid.

And the said appearer further declared that whereas the said indebtedness is for money advanced by the said mortgagees, as a whole or in part, to enable said appearer to cultivate the said property during the years 1884, 1885, 1886, 1887, and 1888, and which is required by him for the protection of his crops of sugar and molasses during the said years 1884, 1885, 1886, 1887, and 1888, in order still further to secure the payment of said notes and said indebtedness to Shattuck & Hoffman, he does by these presents specially pledge and pawn to said Gilbert M. Richardson and said Shattuck
15 & Hoffman the entire crops of sugar and molasses now growing or which may grow on said property during the years 1884, '5, '6, '7 and '8, and further obligates himself to gather and put into condition to ship to market, as soon as the same can be done, the crops of sugar and molasses that he may raise upon or control from the property herein described during the seasons of 1884–'5, 1885–'6, 1886–'7, 1887–'8, 1888–'9, and during any following season or seasons, during which any portion of the debt secured or intended to be secured by this act shall remain unpaid, and also obligates himself to ship the said sugar and molasses from time to time, as soon as the same is gathered and in condition to be sent to market, to said Shattuck & Hoffman to be sold by them.

It is further understood and agreed that said appearer will not sell or otherwise convey or dispose of said lands so long as this mortgage shall remain in force, unless he shall make it a condition precedent to such sale, conveyance, or other disposition that the vendee, donee, or other person to whom such sale, conveyance, or other disposition is intended to be made shall first assume all the obligations, covenants, and agreements of said appearer to and with said Shattuck & Hoffman, as set forth in said articles of agreement hereinbefore referred to, and also such as are contained and set forth in this act; but in no event is this provision to be construed as in any manner waiving, affecting, or impairing the security herein contained in favor of said Gilbert M. Richardson or any other covenants, obligations, or indebtedness herein provided for and intended to be secured.

16 And it is expressly agreed and understood by and between the parties hereto that the said Shattuck & Hoffman shall have the exclusive right to apply the net proceeds of the sale of all sugar and molasses shipped and all payments of money made to them in any one season to the payment of any indebtedness which may be now or which may hereafter become due to said Shattuck & Hoffman by said appearer, upon open account or otherwise, or to the debt secured and intended to be secured by this act which may be due or become due in that season, or the payments of any demands of said appearer, according to their view of the exigency of

the case; that such application may be made at such time and in such manner as they may elect, and that no application of such proceeds of sale or money to the payment of any debt in open account which may at any time be due to the said Shattuck & Hoffman by the said appearer or to any other account shall impair, lessen, or prejudice the other debts secured and intended to be secured by this act or the security herein and hereby provided therefor.

It is also agreed and understood that should this mortgage be foreclosed and the land or other properties herein described sold to satisfy the said indebtedness herein secured, then out of the proceeds of said sale the said indebtedness to said Gilbert M. Richardson, whether held by said G. M. Richardson or his assigns, shall be paid by priority over said indebtedness due or to become due to said Shattuck & Hoffman or their successors and assigns.

17 According to the annexed certificate of the recorder of mortgages in and for the parish of St. Bernard, in this State, dated the twenty-second day of January, 1884, hereto annexed and made part of this act, it appears that there are no mortgages, liens, or encumbrances standing in the name of and against the said Francis B. Fleitas on the said property and recorded in his office except the following: On the property hereinbefore firstly described, viz: The mortgage and vendor's lien granted by the said F. B. Fleitas in favor of his vendor in his aforerecited act of purchase to secure the sum of $13,500, now reduced to $9,000; and on the property hereinbefore secondly described—1st, the mortgage granted by said Fleitas in favor Mrs. Widow B. Fleitas to secure $25,000.00, as per act before N. B. Trist, notary, dated Feb'y 15th, 1879; 2nd, the mortgage granted by him in favor of Lehmann, Abraham & Co. to secure $10,884,07, per act before said notary, Trist, dated March 6th, 1883; 3rd, the pledge and mortgage granted by him in favor of said Lehman, Abraham & Co. to secure $25,000.00, per act before said notary, Trist, dated March 6th, 1883; 4th, the contract entered into between said F. B. Fleitas and the Babcock and Wilcox Company, by which the former promised to pay the latter the sum of $1,823.55 on the completion of work to be made on the said plantation by the said Babcock and Wilcox Company, recorded May 4, 1883, in Book of Mortgages No. 11, fo. 259.

And also to these presents came and appeared said Gilbert M. Richardson, herein represented by William F. Mellen, of the

18 parish of Orleans, State of Louisiana, and said Shattuck & Hoffman, herein represented by William F. Mellen, of the parish of Orleans, State of Louisiana, who severally, in the same presents, declared that for and in behalf of their said constituents, respectively, they accept this mortgage, with all its terms and obligations and agreements, as hereinbefore set forth. The word "cotton," wherever it occurs in the foregoing deed, stricken out and the words "sugar and molasses" inserted in its stead before execution.

Attest: W. A. BRESS.

Thus done and passed, at my office, at New Orleans, in the parish

of Orleans, in the presence of me, said notary, and James Simeon and William B. Murphy, competent witnesses, who have hereto subscribed their names, together with me, said notary, and said parties, on the day, month, and year first hereinbefore written.

F. B. FLEITAS.
WM. F. MELLEN,
For G. M. Richardson.
WM. F. MELLEN,
For Shattuck & Hoffman.

JAS. SIMEON.
W. B. MURPHY.

[SEAL.] BENJAMIN ORY, *Not. Pub.*

I hereby certify the above and foregoing to be a true copy of the original act on file in my records.
New Orleans, June 25th, 1888.
(Signed) BENJAMIN ORY, *Not. Pub.*

19 *Note. Filed June* 29, 1888.

$12,600.00. ST. BERNARD PR., LA., *January 28th*, 1884.

On the first day of January, A. D. 1888 (fixed), I promise to pay to the order of Gilbert M. Richardson, Esq., twelve thousand six hundred dollars, at the Louisiana National Bank of New Orleans, La., for value received, with interest at the rate of eight per cent. per annum after maturity. The payment of this note and interest is secured by a mortgage which is recorded in the public records of St. Bernard parish, in the State of Louisiana.

F. B. FLEITAS.

W. F. M. No. 223, due Jan'y 1, 88.

Written across face: *Ne varietur.* Secured by mortgage and crop lien executed before me this day. New Orleans, January 28th, 1884. Benjamin Ory, not. pub. Marked Exhibit B.

Coupon Attached to Note. Filed June 29th, 1888, and Marked Exhibit D.

Note No. 223. $1,008.00.

ST. BERNARD PR., LA., *Jan'y 28th*, 1884.

On Jan'y first, 1888, without grace, I promise to pay to Gilbert M. Richardson, Esq., or order, at the Louisiana National Bank
20 of N. O., La., one thousand and eight dollars, value received, being an instalment of interest due on that day upon my mortgage note for $12,600, of even date herewith.

F. B. FLEITAS.

Written across face: *Ne varietur.* Secured by mortgage and crop lien executed before me this day. New Orleans, Jan'y 28, '84. Benjamin Ory, not. pub.

Note. Filed June 29, 1888, and Marked Exhibit C.

$1,200.00. ST. BERNARD PARISH, LA., *January 28th*, 1884.

On the first day of January, A. D. 1889 (fixed), I promise to pay to the order of Gilbert M. Richardson, Esq., twelve thousand six hundred dollars, at the Louisiana National Bank of New Orleans, La., for value received, with interest at the rate of eight per cent. per annum after maturity. The payment of this note and interest is secured by a mortgage which is recorded in the public records of St. Bernard Parish, in the State of Louisiana.

F. B. FLEITAS.

W. F. M. No. 223, due Jan'y 1, '89 (fixed).

21 *Coupon Attached to Note. Filed June 29th, 1888, Marked Exhibit E.*

Note No. 223. $1,008.00.

ST. BERNARD PARISH, LA., *Jan'y 28th*, 1884.

On January first, 1889, without grace, I promise to pay to Gilbert M. Richardson, Esq., or order, at the Louisiana National Bank of N. O., La., one thousand and eight dollars, value received, being an instalment of interest on that day upon my mortgage note for $12,600, of even date herewith.

F. B. FLEITAS.

Written across face: *Ne varietur.* Secured by mortgage and crop lien executed before me this day. New Orleans, Jan'y 28, 1884, Benjamin Ory, not. pub.

Coupon Attached to Note. Filed June 29th, 1888, Marked Exhibit F.

Note No. 223. $1,008.00.

ST. BERNARD PAR., LA., *Jan'y 28th*, 1884.

On January 1st, 1888, without grace, I promise to pay to Gilbert M. Richardson, Esq., or order, at the Louisiana National Bank of N. O., La., one thousand and eight dollars, value received, being an instalment of interest due on that day upon my mortgage note for $12,600, of even date herewith.

F. B. FLEITAS.

22 Written across face: *Ne varietur.* Secured by mortgage and crop lien executed before me this day. New Orleans. Jan'y 28, 1884. Benjamin Ory, not. pub.

Notice of Order of Seizure and Sale. Issued June 30th, 1888.

Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana.

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

To F. B. Fleitas:

Take notice that payment is demanded of you, within three days from the service hereof, of the amount specified in the writ of seizure and sale granted on the bill of complaint herein, a copy of which accompanies this notice, with interest and costs; and in default of payment within that delay the property referred to in said bill of complaint will be seized and sold according to law, subject to the order on said bill.

23 A further delay of one day for every twenty miles distance from your domicil to this city, at which place this court is held, is allowed you by law.

Clerk's office, New Orleans, June 30th, 1888.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received June 30, 1888, by the U. S. marshal, and on the same day I served a true copy of within notice of seizure and sale and accompanying bill of complaint on F. B. Fleitas, defendant, by handing the same to him in person and leaving the same in his hands.

Returned same day.

(Signed) R. B. PLEASANTS,
U. S. Marshal,
By D. J. DELANEY,
D'y Marshal.

Petition for Appeal. Filed June 30, 1888.

Circuit Court of the United States, Eastern District of Louisiana.
Equity Side.

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

24 To the honorable the judges of said court:

The petition of F. B. Fleitas with respect shows that he has but just been advised that the plaintiffs in this cause *have* applied to this honorable court for executory process on the alleged mortgage described in the petition on file herein; that the proceeding

has in all things been *ex parte* and without any notice to your petitioner or any day in court. Your petitioner, appearing herein for the purpose of this application only and in all things *pro hac vice*, shows unto the court that, feeling aggrieved by said judgment and decree herein and being advised that there is error therein, and that the plaintiffs will insist and treat the same as a final judgment that the court had jurisdiction to make the same and inflict great injury on your petitioners thereby, your petitioner prays for both an appeal and writ of error from said decree or judgment to the Supreme Court of the United States, returnable at the next term thereof, as provided by statutes in such case; and whereas in a sworn answer in the cause of Mrs. Corinne Warren Fleitas *et al. vs.* Wm. F. Mellen *et al.*, relating to this same property and mortgage, was sworn that the property involved is more than ample security for said alleged debt and interest and costs, your petitioner prays that such appeal and writ of error operate — a supersedeas on such reasonable bond as the court may fix, as provided by law in such cases, and will ever pray, etc.

(Signed) J. R. BECKWITH,
Att'y and Solicitor for F. B. Fleitas.

Appeared for the purpose of this petition only.

25 *Order. Appeal and Writ of Error Refused.*

Extract from the Minute Book, April Term, 1888.

NEW ORLEANS, SATURDAY, *June 30th*, 1888.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

GILBERT M. RICHARDSON *vs.* F. B. FLEITAS.

This cause came on to be heard on the petition of F. B. Fleitas, defendant, for an appeal and writ of error herein—T. J. Semmes & W. F. & D. C. Mellen appearing for complainant, J. R. Beckwith for the defendant—and was argued. On consideration whereof it is ordered that the appeal and writ of error prayed for be refused.

Motion to Quash, with Exhibits. Entered and Filed Nov. 19, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

GILBERT M. RICHARDSON *vs.* FRANCIS B. FLEITAS.

26 And now, for the purposes of this motion and no more and for — other purpose whatsoever, Francis B. Fleitas, by J. R. Beckwith, his solicitor, appearing herein *pro hac vice* for the purposes of this motion only, and in no manner submitting to the jurisdiction of the court in any particular, but at all times protesting that this court never in any manner has obtained jurisdiction over the

said Francis B. Fleitas or any lawful authority to make or enter any order or decree or award any process in this cause against the said Fleitas, or any order or process of seizure and sale against the property described in the petition herein, and considering the affidavit and exhibit attached to and made a part of this motion, in writing, suggesting to the court that this court is on the face of the papers in this cause and in fact and law without any lawful authority or jurisdiction whatsoever to grant or allow any process herein for the reason, amongst others, that the proceeding, if anything, is a proceeding *in rem*, unknown either to law or equity, whereby final decree is sought to be rendered without giving the defendant in decree either a hearing or day in court, contrary to the law of the land as the same governs and controls proceedings in this court under the law and statutes creating this court and defining its powers and jurisdiction;

And, further, that if by the law defining and limiting the jurisdiction and authority of this court this court had authority under any circumstances to issue or allow executory process or order seizure and sale the said petitioner has in and by his showing,
27 as exhibited and on file in this court, made no such showing and presented no such case as will warrant or allow executory process in this or any other court in the State of Louisiana, in that by the terms of the pretended act of mortgage presented to the court by the petitioner matters material, important, and which it was indispensable the court should consider and have made known to it by authentic evidence are not only not presented to the court in any form of evidence whatsoever, but appears on the face of said pretended mortgage to never have been evidenced by authentic act or proof, but are recited to be contained in some document, an act under private signature, and even that evidence withheld from the court by the petitioner, and now for the first time made known to the court as an exhibit to this written motion and made a part hereof:

Considering the premises, it is ordered that the said Gilbert M. Richardson, petitioner in this proceeding, show cause on Saturday, 24 of November, A. D. 1888, at 11 o'clock a. m., if any he has or can show, why this proceeding and all orders made therein shall not be quashed, vacated, and annulled, set aside and held for naught, and any and all further proceeding and process perpetually stayed, and why the court shall not grant such other and further order and relief to this mover as law and justice may require.

And on further making known unto the court that he will make no other and further appearance or pleading herein, at all times believing this proceeding void in law and this court without jurisdiction over the same, that in the event this court shall refuse to grant and allow his said motion to quash and set aside said orders
28 and proceedings herein, the said Gilbert M. Richardson do also then and there, at the same time, show cause why the said Francis B. Fleitas shall not be allowed an appeal from said decree and order of seizure and sale (which said appeal the said Fleitas prays in the event the said motion is disallowed) to the Supreme Court of the United States, returnable at the next regular term of

that Court, or as the law directs in such case, such appeal to operate as a supersedeas upon giving the required bond in such amount as the Court shall direct.

(Signed) J. R. BECKWITH,
Solicitor, Appearing pro hac vice for said Francis B. Fleitas.

Memorandum of Agreement Attached to Motion.

This memorandum of agreeement, made this 28th day of January, 1884, by and between the commercial firm of Shattuck and Hoffman, of New Orleans, Louisiana, of the first part, and F. B. Fleitas, of St. Bernard parish, of the second part, witnesseth:

1. Said Shattuck and Hoffman will, as agents for said Fleitas, undertake to negotiate for said Fleitas a loan of sixty-three thousand dollars, payable one-fifth annually on the first day of January (fixed), 1885, 1886, 1887, 1888, 1889, respectively, with interest at eight per cent. per annum from date of loan annually as it accrues;
29 said interest to be represented and evidenced by coupons or interest notes; said loan is to be secured by a first mortgage on the Corinne and Myrtle Grove plantations of said Fleitas in St. Bernard parish, Louisiana.

2. In consideration of the premises said Fleitas will allow and pay to said Shattuck and Hoffman an amount equal to two and one-half per centum (2½%) of said sum of $63,000 as commissions, and he moreover obligates himself to said Shattuck and Hoffman, their assigns and successors, to ship all the crop of sugar and molasses grown or controlled by him during the continuance of said loan and mortgage for sale by said Shattuck and Hoffman on arrival, at their option, for account of said Fleitas, and that his said shipments shall be such that the gross proceeds of the sale thereof shall in no year be less than eighty thousand dollars ($80,000). For the handling of said sugar and molasses — the sale thereof said Fleitas will allow and pay to said Shattuck and Hoffman a commission of two and one-half per cent. on sales and all the ordinary and usual charges incident to such business as established by the customs of merchants in New Orleans; and should said shipments not reach in any one year the amount hereinbefore mentioned said Fleitas will, nevertheless, allow and pay to said Shattuck and Hoffman the same amount of commissions as if said shipments had in fact reached the amount hereinbefore provided for.

3. Said Fleitas is at liberty to make a *bona fide* sale of said plantations or either of them at any time after the first day of January, 1886, provided said sale is made after thirty days'
30 notice to said Shattuck and Hoffman, and thus take up and pay off so much of said loan as may be then unpaid; but such payment is only to be made in the months of December, January, or February, and until such payment is made in full said mortgage shall remain in full force and effect and unimpaired by anything herein contained.

4. Notwithstanding said sale may be made or said debt may be paid, said Fleitas will, nevertheless, ship to said Shattuck and Hoff-

man all the said crops grown on said plantations in the season next preceding the date of said payment, and said shipment shall not be less than the amount of $80,000, as hereinbefore mentioned.

5. It is estimated that said Fleitas will need of said loan the sum of $25,000 to pay his indebtedness to Lehman, Abraham & Co., and the further sum of $12,000 to pay off the holders of certain mortgage and lien notes. The balance of the net proceeds of said —, say $24,425, will remain in the hands of said Shattuck and Hoffman, to be drawn against by said Fleitas in monthly instalments of, say, $3,500 on the first day of each month from January to July, 1884, inclusive. In addition to this sum of $3,500, to be drawn on the first or other day in said months, he may, if he shall so deem it —, in any one of said months draw the sum of $500, but in such case said $500 is to be deducted from the $3,500 to be drawn in the next succeeding month. So long as said balance of $24,425 shall remain in the hands of said Shattuck and Hoffman they will allow said
31 Fleitas interest thereon at 5 per cent. per annum, but as each instalment thereof is drawn by said Fleitas interest on the amount so drawn shall cease.

6. Said Fleitas will, for the benefit of the mortgagee of said mortgage, take out such policies of insurance as may be approved by said mortgagee, to the amount of 25,000 dollars on his sugar-house, assign them to said mortgagee, as may be required, and will keep them alive.

7. Said Shattuck and Hoffman will, in accordance with the customs of the merchants of New Orleans, effect insurance upon said sugar and molasses in transit from said plantations to New Orleans and while in warehouse in said city.

8. Said Fleitas will furnish abstract of title to said plantations, as may be required by said Shattuck and Hoffman, at his own expense.

9. In the event of an overflow from the Mississippi river sufficient to imperil or threaten or actually to destroy the crops of 1884 on said plantations or either of them to a material extent, the monthly instalment of $3,500 each provided for in article fifth hereof will not be drawn for by said Fleitas or paid by said Shattuck and Hoffman.

(Signed) SHATTUCK & HOFFMAN.
F. B. FLEITAS.

Witness:
(Signed) D. A. KENNEDY.

Affidavit of F. B. Fleitas Attached to Motion.

STATE OF LOUISIANA,
Parish of Orleans, Eastern District of Louisiana:

32 Francis B. Fleitas, being duly sworn, deposeth and saith that the document annexed to this affidavit and made part hereof as Exhibit A is an original of the contract, under private act and signature, made part of the mortgage act made part of the peti-

tion and upon which the alleged order of seizure and sale is made in the proceeding filed in the circuit court of the United States for the fifth circuit and eastern district of Louisiana, entitled "Gilbert M. Richardson *vs.* Francis B. Fleitas," this deponent, and that the signatures attached thereto are the genuine signatures of the said several parties executing said contract, and that the same was at all times considered a part of said mortgage, not by public act but containing a confidential relation between the parties to said mortgage act, made by private act, so that it should not become a public record, open to the inspection of all parties, and that for this reason the said act of mortgage was by the consent of all parties thereto made only in part authentic by public act, and was in fact made to cover advances to be made, as appears by said contract annexed, and that there never was any authentic proof by public act that any such advances were made, to the knowledge of this deponent; and further saith not.

(Signed) F. B. FLEITAS.

Subscribed and sworn to before me Nov. 7, 1888.

(Signed) WM. GRANT,
Com'r United States Circuit Court, Eastern District La.

33 *Marshal's Return.*

Received, Nov. 20, 1888, by the U. S. marshal, and on the same day and date I served a true copy of the within motion on W. F. & D. C. Mellen by leaving the same at their office, in the hands of James McCann, office boy.

(Signed) GEO. MOORMAN,
U. S. Marshal,
Per T. M. MOORMAN,
Deputy U. S. Marshal.

Ret. Nov. 21, 1888.

Motion of Complainant to Strike from Files. Filed Nov. 24, 1888.

U. S. Circuit Court.

GILBERT M. RICHARDSON
vs.
FRANCIS B. FLEITAS. } No. 11722.

Now comes the plaintiff and moves the court to strike from its files the motion made by the defendant on the — day of November, 1888, no such motion being allowed by the rules of this court nor by the laws of Louisiana.

34 *Motion to Quash Refused and Suspensive Appeal Granted and Reference to Master.*

Extract from the Minute Book, November term, 1888.

NEW ORLEANS, SATURDAY, *November* 24, 1888.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

Proceedings before his honor the district judge.

This cause came on to be heard on the motion herein filed by the defendant to quash the proceedings and orders herein, and for an appeal, and also upon the motion of the complainant to strike from the files—T. J. Semmes & W. F. & D. C. Mellen appearing for complainant, J. R. Beckwith for the defendant—and was argued by counsel for the parties, respectively, and submitted. On consideration whereof it is ordered that said motion to quash and to strike from the files be refused, and that said motion for a suspensive appeal be granted upon the defandant's giving bond with security in such amount as may
35 be fixed by the court, and that a reference be made to J. W. Gurley, Esq., as master, to take evidence and testimony and report to the court as to the facts which will enable the court to determine the amount of bond required for a suspensive appeal.

Notice. Issued 26 *Nov'r*, 1888.

U. S. Circuit Court, Eastern Dist. La.

G. M. RICHARDSON *vs.* F. B. FLEITAS.

Before J. W. Gurley, Master, &c.

J. R. Beckwith, Esq'r, solicitor for defendant:

Please take notice that I have assigned Thursday, 29th Nov., 1888, at 11 o'clock a. m., for hearing the above cause on the matters of reference, at U. S. atty's office, custom-house building.
New Orleans, 26 Nov., 1888.
Attest: (Signed) J. W. GURLEY, *Master, &c.*

Marshal's Return.

Received, Nov. 26, 1888, by the U. S. marshal, and on the same

day and date I served a true copy of the within motion on J. R. Beckwith by handing the same to him in person.

(Signed) GEO. MOORMAN,
U. S. Marshal,
Per T. M. MOORMAN,
D'y U. S. Marshal.

Ret. Nov. 27, '88.

36 *Evidence Taken Before the Master as to Amount of Bond. Filed December* 6, 1888.

United States Circuit Court, Eastern District of Louisiana.

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

On reference before J. W. Gurley, master.

The testimony of witnesses taken on the above reference, at New Orleans, this 29th day of November, 1888.

Present: W. F. & D. C. Mellen & T. J. Semmes, Esqrs., for the complainant; J. R. Beckwith, Esqr., for the defendant.

The appellant, subject to the protest already filed, calls upon the witness, W. H. HOWCOTT, who, being duly sworn, deposes and says:

By Mr. BECKWITH:

Q. What is your occupation and to what extent are you familiar with plantation property?

A. I am a land agent. I buy and sell lands.

Q. Where do you reside?

A. In New Orleans.

Q. Are you familiar with the value of real estate in the
37 parish of St. Bernard?

A. I handle some there, and I think I know it pretty well.

Q. Do you know anything of the plantations known as the Myrtle Grove and the Corinne?

A. I have been over them both.

Q. How recently?

A. I was over them three days ago. I had one of the properties for sale.

Q. What, in your opinion, would you state as the value of the two plantations—the Corinne and the Myrtle Grove?

A. I should think between $30,000 and $35,000—say $32,000 or $33,000.

Q. You make your estimate including the property immovable by destination?

A. No, sir; I did not know how much that is; I only estimate

the land and the improvements. I value them on the good condition of the levee and the soil.

Q. Has there been recently a new levee built there?

A. Yes, sir; a very substantial, good levee; the best in the parish.

Q. To what extent would they affect the valuation?

A. In my estimation, very materially to its advantage.

Q. That is, you deem it worth more than without it?

A. Yes, sir.

38 ALBERT ESTOPINAL, sworn for the defendant, says:

Q. Where do you reside?

A. In the parish of St. Bernard.

Q. You represent that parish in the senate of the State?

A. Yes, sir.

Q. How long have you lived there?

A. I lived there all my life. I was born there.

Q. You know the Corinne and Myrtle Grove plantations?

A. Yes, sir.

Q. A new levee was built there within a short time?

A. Yes, sir.

Q. How long ago?

A. Within 6 months. It is not fully completed yet, but one point has only to be built.

Q. What, if any, estimate would you make of the value of the two plantations in gross—taken together?

A. I think that 30,000 or 35,000 dollars would be a very fair estimate of the value of the land, taking into consideration the building of this levee, which enhances that property very much.

Q. Upon what do you make your estimate?

A. Upon the proximity of these places to New Orleans and upon the disposition to buy property in that neighborhood. There is a good demand for property now along that portion of the coast.

39 Cross-ex. by Mr. SEMMES:

Q. What was the reason that this new levee was built?

A. Well, it had been bad for several years; the parish and Mr. Fleitas himself, and all the proprietors along the front had a great deal of trouble.

Q. Is this a caving bank?

A. No, sir; it is a large batture, and this levee has taken onto the Corinne and Myrtle Grove plantations, 70 or 80 acres of land; it gained that by the building of the levee.

Q. To what extent has it been enhanced in value?

A. To that extent it has been enhanced in value.

R. V. DUCROS, sworn for the defendant, says:

By Mr. BECKWITH:

Q. Where do you reside?

A. In the parish of St. Bernard.

Q. How long have you resided there?

A. I was born there.

Q. Are you familiar with the Corinne and Myrtle Grove plantations?

A. Yes, sir.

Q. What, in your opinion, is the value of the real estate—I mean the land, just now—irrespective of the property immovable by destination?

A. In the neighborhood of $35,000.

40 Q. You speak of it with reference to the lands of the batture that is now included within the new levee; you include that in your estimate?

A. Yes, sir.

By Mr. SEMMES:

Q. If put up at auction and sold for cash do you think it would bring $35,000?

A. Well, I cannot answer; it depends upon the need of the sale. To any one that needs a sugar plantation—if I wanted it I would give $35,000 for it.

J. L. BOUTTE, Jr., sworn for the complainant, says:

By Mr. SEMMES:

Q. You have been the manager for Mr. Fleitas on these two plantations, have you not?

A. Not exactly manager; I have been overseeing for him.

Q. For how many years?

A. Fourteen years last October.

Q. When did the sugar-house burn down—what year?

A. The sugar-house burned down two or three years ago.

Q. In the year 1886 what crop and what kind of crops were produced on the plantation—or was the sugar-house then standing, in 1886?

A. Yes, sir.

41 Q. Then after the burning of the sugar-house I want to know what crops were produced on the plantations?

A. We had cane and vegetables—potatoes, cabbages, and onions and such things.

Q. Do you know what revenue was derived from the sale of these products in the year 1886?

A. No, sir; not exactly.

Q. You do not know?

A. No, sir.

Q. To what extent was it cultivated in the various kinds of productions that you have mentioned—how many acres of cane, how many acres of cabbages, and how many acres of other things?

A. Well, after the sugar-house burned it destroyed a great many of the sugar cane. Having no sugar-house to gind it, we planted corn, and, I think, we had about 75 acres of cabbages.

Q. In 1887 you had 75 acres of cabbages?

A. It was burned in 1886, and 1887 is the last year that we had these products.

Q. Go on and state the number of acres of each thing planted in the year 1887.

A. We did not begin right away to plant these cabbages in 1887, after the sugar-house burned down; it was late in the season when we began. The cabbage crop is usually put in about September or October, but this was not put in then.

Q. How many acres of cane were planted in 1887?

42 A. We did not plant any.

Q. You did not plant any at all?

A. No, sir.

Q. How many stubble was left?

A. We had put down a great deal of cane to plant, and had about 125 or 150 acres of seed cane to plant, but we did not plant them.

Q. Was all the cane in 1887 planted? Was all the cane on the place stubble or how many acres stubble?

A. We had about 200 or 250 acres of stubble. That grew up as it pleased.

Q. And 75 acres of cabbage. What other vegetable?

A. We planted some potatoes, I think.

Q. How much?

A. About 50 barrels.

Q. Anything else?

A. We had some artichokes—about 8 or 10 acres of them.

Q. Anything else?

A. We had some corn.

Q. What was the average expense per month on that plantation in 1887?

A. That I cannot tell you.

Q. If you know now, state what was the annual cost of carrying on that plantation.

A. Somewhere about $250 or $200 a month.

Q. $200 or $250?

43 A. Yes, sir; I think so.

Q. In 1888 what was planted?

A. We planted the same crops.

Q. How much cane did you plant?

A. In 1888 we did not plant any cane.

Q. So the crop of 1888 consists of what was planted in 1887?

A. Well, we planted the same this year also; we planted cabbage.

Q. I mean the cane crop of 1887 consists of the cane planted in 1887—the stubble.

A. In 1887 we planted very little cane; something like 10 or 15 acres.

Q. When did you plant this 125 acres that you spoke of a moment ago?

A. I said we had that down in the windrow for seed cane, but we did not plant it.

Q. What became of that?

A. That grew up the best way it could.
Q. And in 1887 you planted only 15 acres of cane?
A. Yes, sir.
Q. Did you plant any in 1888?
A. No, sir.
Q. What does the crop consist of, so far as cane is concerned?
A. When we first began to cut the cane we had 175 acres of stubble cane.
Q. And 15 acres of plant?

A. We had not any plant cane; the cane that was put
44 down for seed grew up the best way it could, but we had no windrows grow up this year; the windrows were in 1886 for what grew in 1887.

Q. So the crop of this year is altogether stubble cane in 175 acres?
A. Yes, sir.
Q. Now, then, you had potatoes and artichokes and how many acres of cabbage?
A. 75 acres.
Q. And the artichokes?
A. We had about 60 or 70 acres.
Q. Anything else?
A. Now planted?
Q. Yes; or planted during the year.
A. Well, we have plants to plant much more.
Q. But you have not planted any more?
A. No, sir; we have cabbage plants enough to plant 200 acres, and artichoke and onion plants.
Q. What has been the cost, in 1888, of conducting the plantation for a month? I do not expect you to give me the actual dollar.
A. About $250, or about that.
Q. I am not speaking now, when I ask you, of the cost of the production, but the cost of the labor on the place.
A. I understand you.

Q. And the other incidental expenses.
45 A. Well, that is about it.

Q. What is the net revenue of the plantation? What would it have been, supposing it had not been interrupted?
A. I do not know about the net revenues of the plantation at all.
Q. Do you think after the payment of expenses it would net two or three thousand dollars a year?
A. I do not know whether it would or not.
Q. You do not know?
A. No, sir.

By Mr. BECKWITH:

Q. When did the marshal take possession—what date was it?
A. On the 23rd of this month—November.
Q. Then he is holding possession still, is he?
A. Yes, sir.

All the testimony taken relative to the crops of the plantation or

the expense of running it was taken under objection, on the ground that is of no matter of import in this inquiry.

J. E. FLEITAS, sworn for the complainant, says:

By Mr. SEMMES:

Q. Have you not kept the books of this plantation?
A. No, sir; we never kept books on the plantation.
Q. You never kept books?
46 A. Yes, sir; we kept a bank book; we made deposits and drew against them.
Q. Was the money deposited and the money withdrawn from the bank the result produced on the plantation and the expenses of the plantation?
A. Yes, sir.
Q. In other words, does the bank book show the amount received from the crops and the checks show the amount drawn for the payment of the expenses?
A. Yes, sir.
Q. Have you got that bank book?
A. Yes, sir; I suppose I have; but not with me.
Q. Can you give us a general idea of what — the probable expenses of the year 1887 and the probable amount of receipts of the same year?
A. No, sir; because I was absent this year, 1888. I went away in the month of October. We have no regular books. My brother keeps this book sometimes. I have been here in the city all the time.

Mr. Semmes calls for the production of the bank book referred to by the witness, when he then will continue his examination of the witness.

By Mr. BECKWITH:

Q. Where is that bank book?
A. I do not know. I was here in the city.
Q. In whose name was that account kept?
A. In Fleitas'; the name of the plantation.
47 Q. I understand you to say it is not here in town?
A. No, sir; I do not think it is here.
Q. Where is it?
A. On the plantation.

Adjourned to Saturday, December 1st, 1888, at 10½ o'clock a. m.
Attest: J. W. GURLEY, *Master, &c.*

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

SATURDAY, *December 1st.*, 1888.

Examination resumed pursuant to adjournment.

All of counsel present.

J. E. FLEITAS, the witness, recalled, producing 2 bank books.

Examined by Mr. SEMMES:

Q. These are the two bank books to which you referred in your testimony?

A. Yes, sir.

48 Q. I see that one has the name of J. M. Fleitas and the other has the name of J. E. Fleitas.

A. Well, that is an error of the bank.

Q. The name J. M. Fleitas is an error of the bank?

A. Yes, sir.

Q. I notice this bank account—they are both with the Citizens' Bank, and on September 21, 1887, there is a deposit entry of $1,227.50. What was that?

A. The first 3 deposits I made with my own money.

Q. What was that $1,227.50?

A. That is money of my own and the other two after that.

Q. That is, the entries $482.50 and $296.80?

A. Yes, sir.

Q. These three amounts had nothing to do with the plantation; they were your own money?

A. Yes, sir.

Q. The balance of it are the products of the plantation?

A. Yes, sir.

Q. Then in the other book, which commences the 20th March, 1888, there are various small deposits through the months of March, April, May, June, July, up to September, 1888?

A. Yes, sir.

Q. Are all these deposits made in this book the proceeds of the crops of the plantation?

49 A. Yes, sir; all except the three first entries in the other book.

Q. Now, all the expenditures are the checks which appear to be drawn in both books. Are they all merely for the expenses of working the plantation or the expenses of living besides—grocery, clothing, and wife's bills?

A. They were for running the plantation.

Q. Exclusively?

A. Yes, sir; I think so, beause I paid them so much. I sent it down.

Q. Is this all the pay-rolls?

A. With the pay-rolls, harness, lumber, etc.

Q. Is there anything of it for the domestic support of the family—dry goods bills, shoe bills, and grocery bills?

A. No, sir; I do not think so.

Q. So that all this money represented by the checks was paid out during the times mentioned in these two books solely for the working of the place?

A. Yes, sir; I do not remember having given any check for anything else.

Mr. Semmes offers the two books in evidence and insists that they be filed, when, by consent, a copy of the books is herewith appended to the deposition of the witness for reference.

Adjourned *sine die*, and it was agreed by counsel that the case should be taken up for hearing before the court on Thursday, the 6th of December, 1888.

Attest: J. W. GURLEY, *Master, &c.*

50 *Report of Master of Facts for Purpose of Fixing Amount of Appeal Bond. Filed Dec.* 6, 1888.

G. M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

To hon. the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The undersigned master was ordered to take testimony and report as to the facts which will enable the court to determine the amount of bond to be required of the defendant for a suspensive appeal. For that purpose he has held two sessions, and, assisted by counsel of the respective parties, has taken the testimony, herewith returned, of five witnesses. From that testimony and the record the master reports the facts as follows:

On the 29th June, 1888, the plaintiff filed his bill asking that certain property, on which he claimed a mortgage by act importing confession of judgment, be seized and sold to satisfy his demand. The amount claimed as due, with interest claimed calculated to Dec'r inst., and 5 % attorneys' fees added, is $30,675.96.

On the 23 Nov., 1888, the marshal, under an order of seiz-
51 ure and sale, took possession of and still holds the property.

In 1886 the sugar-house on the place was destroyed by fire, and in consequence no sugar was made and no cane was planted that year nor subsequently. The only cane now on the place is 175 acres of stubble.

In 1887 seventy-five acres in cabbages, fifty barrels of potatoes, eight or ten acres in artichokes, and some corn were planted.

In 1888 seventy-five acres in cabbages and sixty or seventy acres in artichokes were planted.

The average cost in carrying on the place in 1887 and 1888 was, according to testimony of Boutte, from $200 to $250 per month. Within the last year a large and substantial levee, taking in seventy or eighty additional acres of land from the front batture, has been built.

The property as it now stands, exclusive of that immovable merely by destination, is of the value of $32,500.00.

The bank book of J. E. Fleitas shows that from Mar. to Sept.,

1888, seven months, he deposited in bank $12,923.85, of which $2,006.80 was on his private account and the balance, $10,917.05, was on the plantation acc't. There was checked out a total of $11,486.75. As this sum was $569.70 in excess of the amount deposited from the plantation it should be charged to Mr. Fleitas, which, with the balance in bank, makes up his private de-
52 posit of $2,006.80. The balance checked for, $10,917.05, must be charged to the plantation, making the average expense per month $1,559.58 for the seven months in 1888. Mr. J. E. Fleitas testifies that all the money derived from the plantation was deposited in bank and all the expense of carrying it on was checked for; that the bank books show the receipts and expenditures, and that no other books were kept.

Protest and exceptions were filed by the defendant to proceedings under the order of reference herein, and are herewith returned.

The bill of Harry Langford, Esq., for services as stenographer, amounting to $12.95, was paid—$9.80 by the plaintiff and $3.15 by the defendant.

The master asks that he be allowed fifty dollars for his services herein, and that the court make appropriate order for its payment as co ts.

Respectfully submitted.

(Signed) J. W. GURLEY, *Master, &c.*

53 *Submission of Master's Report.*

Extract from the Minute Book, November Term, 1888.

NEW ORLEANS, THURSDAY, *December* 6, 1888.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

GILBERT M. RICHARDSON
vs.
FRANCIS B. FLEITAS. } No. 11722.

This cause came on this day to be heard on the master's report of facts required for the purpose of fixing the amount of bond for a suspensive appeal herein—W. F. & D. C. Mellen & T. J. Semmes appearing for complainant, J. R. Beckwith for the defendant—and was argued by counsel and submitted, when the court took time to consider.

Order on Master's Report of Facts as to Appeal Bond, etc. Entered and Filed December 7, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

54 GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

On the master's report of facts required for the purpose of fixing the amount of bond for a suspensive appeal.

This cause came on to be heard and was argued by counsel;

whereupon the court, on consideration thereof, and further reconsidering the whole matter with reference to the order or decree awarding executory process herein and the defendant's applications for appeal therefrom, doth now order that so much of the order of the 29th of June, A. D. 1888, awarding executory process herein as directs the marshal to stay the sale of the property directed to be seized till the further orders of the court be stricken out, and that all orders made subsequently to the date of defendant's application for an appeal on June 30, A. D. 1888, except the order of reference to the master to report the facts upon which the amount of bond could be determined and fixed be revoked, and that an appeal, to operate as a supersedeas, be allowed to said defendant *nunc pro tunc* as of said 30th day of June, 1888, according to his petition then presented, on his giving bond as required by law, with good and solvent surety, in the sum of one thousand dollars.

And it is further ordered that the marshal, on the filing of such bond, release from seizure the property he has seized herein,
55 and that the exceptions to the order of reference be overruled, and that the master be allowed a fee of fifty dollars for his services, to be taxed as costs herein.

Bond for Appeal. Filed December 7, 1888.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Francis B. Fleitas, as principal, and Joseph Albrecht, as surety, are held and firmly bound, jointly and severally, unto Gilbert M. Richardson in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Gilbert M. Richardson, — heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 8th day of December, in the year of our Lord eighteen hundred and eighty-eight.

Whereas the said Francis B. Fleitas having heretofore, to wit, on the 7th day of December, 1888, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 29th day of June, 1888, by the circuit court of
56 the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Gilbert M. Richardson *versus* the said Francis B. Fleitas, No. 11722 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Francis B. Fleitas shall prosecute his said appeal to effect and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) F. B. FLEITAS. [L. S.]
JOSEPH ALBRECHT. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) J. R. BECKWITH.

Bond approved December 8, 1888.
(Signed) EDWARD C. BILLINGS, *Judge.*

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } ss:

Personally appeared Joseph Albrecht, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of five thousand dollars over and above all of his debts and liabilities and property exempt from execution.
(Signed) JOSEPH ALBRECHT.

Subscribed and sworn before me this 8th day of December, 1888.
(Signed) WM. GRANT,
Commissioner U. S. Circuit Court,
Eastern District of Louisiana.

57 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 56 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Gilbert M. Richardson *vs.* F. B. Fleitas, No 11722 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 13 day of December, A. D. 1888.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 13 day of December, A. D. 1888.

EDWARD C. BILLINGS, *Judge.*

58 UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Gilbert M. Richardson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Francis B. Fleitas is appellant and you, the said Gilbert M. Richardson, are appellee, in suit No. 11722 of the docket of said court, wherein Gilbert M. Richardson is plaintiff and the said Francis B. Fleitas is defendant, to show cause, if any there be, why the decree rendered against the said Francis B. Fleitas, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 8th day of December, in the year of our Lord one thousand eight hundred and eighty-eight.

EDWARD C. BILLINGS, *Judge.*

59 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 11722. G. M. Richardson *vs.* F. B. Fleitas. Citation. Filed Dec. 10, 1888. H. J. Carter, d'y clerk.

Marshal's Return.

Received Dec. 8, 1888, by the U. S. marshal, and on the same day and date I served a true copy of the within original citation of appeal upon Gilbert M. Richardson by handing the same to Thos. J. Semmes in person, attorney of record for Gilbert M. Richardson, and leaving the same in his hands. The said Gilbert M. Richardson being absent from this district, the foregoing service was made by me in the manner above set forth upon Thos. J. Semmes, attorney of record, in accordance with verbal instructions from J. R. Beckwith, attorney of record for F. B. Fleitas.

Ret'd Dec. 8, '83.

GEO. MOORMAN,
U. S. Marshal, E. Dis'ct of La.,
By A. B. JOHNSTON,
Dep'ty U. S. M'l, E. Dis'ct of La.

A. B. Johnston, being duly sworn, deposes & says that he is a lawfully qualified dep'ty U. S. marshal for the eastern dis'ct of Louisiana, and that the service above set forth is correctly stated.

A. B. JOHNSTON.

Sworn to & subscribed to before me this 7th day of December, 1888.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

Endorsed on cover: E. Louisiana C. C. U. S. No. 1454. Francis B. Fleitas, appellant, *vs.* Gilbert M. Richardson. Filed December 18, 1888.

SUPREME COURT OF THE UNITED STATES.

F. B. FLEITAS
vs.
GILBERT M. RICHARDSON. } No. 299. October Term.

Appeal from the circuit court for the eastern district of Louisiana.

It is stipulated and agreed by and between counsel for appellant and appellee that the attested copy of the writ of seizure and sale, omitted from the original transcript in this cause as taken up by the appellee, but filed by the appellant in this cause on the 21st of January, 1889, be taken as part of the record herein without resorting to certiorari, and that the same be printed as a part of the record herein.

March 17, 1892.

J. R. BECKWITH,
Counsel for Appellant.
THOS. J. SEMMES,
For Appellee.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

The President of the United States to the marshal of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to seize and take into your possession, according to law, the property described in the petition herein, as follows, including the buildings, fixtures, and all improvements and appurtenances situated thereon, to wit:

First. A certain tract of land or plantation known as the "Myrtle grove," situated in the parish of St. Bernard, in the State of Louisiana, on the left bank of the River Mississippi at about two and one-half leagues below the city of New Orleans, measuring about twenty arpents, more or less, front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side, measuring nineteen arpents and twelve toises in width, and having on the lower side line, which separates it from the lands of Ducros, a depth of two hundred and thirty-one and one-half arpents

and on the upper side line, which separates it from the property of Gabriel Villeré, a depth of one hundred and ninety-seven and one-third arpents, both rear lines diverging four degrees fifty-four minutes and thirty seconds, and running to the property of Antoine Michand, which bounds said plantation in the rear, being the property which said F. B. Fleitas acquired from L. E. Lemarie by act passed January 7th, 1882, recorded in Book No. 15, fol. 121–123, of the records of conveyances of St. Bernard parish, La.

Second. A sugar plantation situated in St. Bernard parish, at about seven miles below the city of New Orleans, on the left bank of the river Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Messrs. Erreville F. Villeré and Denis Villere and on the lower line by the plantation of A. W. Walker, being the property which the said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated Ap'l 28, 1877, and registered in Book of Conveyances No. 13, p. 194, of the records of St. Bernard parish, La., and known as the "Corinne" plantation, and also all the engines, boilers, kettles, and other machinery and all other property of whatsoever name or description, immovable by destination, then on or that might be thereafter placed on or attached to said plantations or either of them—

To satisfy the amount of complainant's demands as set forth in the bill and petition herein, to wit, twenty-seven thousand two hundred and sixteen dollars, with interest on twenty-five thousand and two hundred dollars thereof, at eight per cent. per annum, from January 1st, 1888, and on two thousand and sixteen dollars thereof, at five per cent., from January 1st, 1888, and five per cent. attorney's fees on said amount so in suit, and all costs.

Said sale to be for cash, without appraisement, and said sale to be stayed until the further orders of the court, under its order dated June 29th, 1888, on the bill herein; and what you do in the premises you make due return thereof, together with this writ, to our said court, according to law.

[SEAL.] Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 22nd day of November, A. D. 1888.

(Signed) E. R. HUNT, *Clerk.*

CLERK'S OFFICE.

I certify that the foregoing is a true copy of the original writ of seizure and sale issued in the case of Gilbert M. Richardson *versus* F. B. Fleitas and placed in the hands of the U. S. marshal for the eastern district of Louisiana, and is not included in the transcript of record as made for the U. S. Supreme Court.

Witness my hand and seal of said court, at the city of New Orleans, this 11th day of January, 1889.

{Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.}

E. R. HUNT, *Clerk.*

[Endorsed:] Sup. Court U. S. 1888, Oct'r term. No. 299. Gilbert M. Richardson *vs.* F. B. Fleitas. Copy of writ of seizure and sale.

[Stamped:] Office Supreme Court U. S. Filed Jan. 21, 1889. James H. McKenney, clerk.

[Endorsed:] Case No. 13,444. Supreme Court U. S., October term, 1891. Term No., 299. Francis B. Fleitas, app't, *vs.* G. M. Richardson. Stipulation & addition to record. Filed Mar. 21, 1892.